

TOWN OF WOODSTOCK
NOTICE OF SPECIAL TOWN MEETING
November 19, 2014
7:00PM

A Special Town Meeting of the electors and citizens qualified to vote in town meetings of the Town of Woodstock, Connecticut, will be held on Wednesday, November 19, 2014 at 7:00 p.m. at the Woodstock Town Hall, 415 Route 169, Woodstock, Connecticut to consider the following actions and to vote on the following matters:

- 1.) To elect a Moderator;
- 2.) To consider and vote upon the following Resolution:
RESOLVED, that the Town of Woodstock approve the Contract between the Town of Woodstock and Gutches Lumber, Inc. of Cortland, New York to allow the harvesting of timber on the 113 acre parcel of Town-owned land located on Perrin Road, Map 6389, Block 70, Lot 22, according to the Contract as recommended by the Board of Selectmen. A copy of the proposed Contract is available in the Town Clerk's office.
- 3.) To transact such other business as may properly come before said meeting.
- 4.) To adjourn.

Dated at Woodstock, Connecticut, this 6th day of November, 2014.

/s/Allan D. Walker, Jr., First Selectman,
/s/Chandler Paquette, Selectman,
/s/D. Mitchell Eaffy, Selectman

Attest: Judy E. Walberg, Town Clerk

AGREEMENT
TIMBER HARVESTING ON TOWN LAND

This Timber Harvesting Agreement (the "Agreement") for the harvesting of timber on town owned land located at Perrin Road, Woodstock, Connecticut, is made this ____ day of November, 2014 by and between the TOWN OF WOODSTOCK, a Connecticut municipal corporation with a mailing address of 415 Route 169, Woodstock, Connecticut 06281-3039 (hereinafter referred to as the "Town") and Gutches Lumber Co., Inc., 890 McLean Road, Cortland, NY 13045 (hereinafter referred to as the "Purchaser").

WHEREAS, Town owns a 113 acre parcel on Perrin Road, Woodstock Connecticut ("the Premises"), which is more particularly described in a deed recorded in the Woodstock Land Records at Volume 63, Page 589; and

WHEREAS, Purchaser intends to use the Town's Premises for the purpose of harvesting timber and directly related activities as set forth in Purchaser's Proposal and Bid dated October 24, 2014 ("the Contract"), and desires to use the Premises for the transport by foot or vehicle of such timber ("Permitted Use"); and

WHEREAS, Town and Purchaser have agreed to establish the terms and conditions of Purchaser's harvesting of the timber from the Premises and to establish access to the Premises, as set forth in this Agreement.

NOW THEREFORE, in consideration of \$1.00, the mutual benefits conferred herein, Town intends to give, and Purchaser intends to accept, a license permitting Purchaser to use the Premises under the following terms and conditions:

SECTION I

PURCHASER'S RESPONSIBILITIES

1. Timber Harvesting on the Premises: Purchaser's use of the Premises is restricted to harvesting timber on the Premises by its employees, agents and independent Purchasers and those persons or entities selected or designated by Purchaser in the following quantities (the "Work"):

<u>SPECIES</u>	<u>NO. OF TREES</u>	<u>VOLUME (BF)</u>	<u>AVE.BF/TREE</u>
Red Oak	281	102,935	366
Black Oak	152	34,545	227
White Oak	29	6,935	239
Ash	135	27,400	203
Hickory	107	21,495	201
Yellow Birch	66	8,775	133
Hard Maple	10	2,165	216
Cherry	15	2,600	173
Soft Maple	<u>52</u>	<u>8,165</u>	157
Total	847	215,015	

2. Hours of Operation: The hours of operation of Purchaser's use of the Premises for timber harvesting are from 7:00 a.m. to 6:00 p.m., Monday through Saturday, inclusive.

3. Term: This Agreement shall commence from the date of its execution and shall terminate on December 31, 2015 unless sooner terminated under this Agreement or under the terms of the Contract, ("Term"). This Agreement shall terminate if Purchaser either completes the harvest of the amounts of timber set forth herein or discontinues the use of the Premises for a period of thirty (30) consecutive days unless wet conditions prevail as determined by the forester.

4. Restoration of the Premises: During the Term, Purchaser shall not create any hazardous condition or nuisance affecting the public's health or safety. Upon the expiration of the Term, Purchaser shall restore the Premises to its condition prior to the commencement of the License.

5. Operational Means and Methods: The Purchaser shall have control over, be in charge of, and shall be responsible for operational means, methods, techniques, sequences or procedures in connection with any work arising out of this Timber Harvesting Agreement. Purchaser agrees to comply with the Special Conditions of the Work as set forth in **Exhibit A**.

6. Certificates of Insurance: The Purchaser shall procure and maintain insurance, as may be required by State law and the provisions of the Request for Proposals in the form and amounts set forth in **Exhibit A**, attached hereto, for protection for claims under Workers' Compensation Acts, claims for damages because of bodily injury including personal injury, sickness or disease, or death of any and all employees. Certificates of Insurance acceptable to the Town shall be filed with the Town. Such insurance must be by insurance companies licensed to write such insurance in Connecticut. Such insurance shall remain in place for the duration of the Agreement, and shall not be diminished without the prior written approval of the Town. Certificates of Insurance are attached hereto as **Exhibit B**.

7. Performance Bond: The Purchaser shall, prior to the start of harvesting, furnish the Town with a Performance Bond in the amount of \$4,000.00 (Four Thousand Dollars), conditioned upon the performance by the Purchaser of all undertakings, covenants, terms and conditions of the Agreement. Such Bonds shall be executed by the Purchaser and shall be in a form acceptable to the Town Treasurer. When Surety Company Bonds are used, the corporate bonding company shall be licensed to transact such business in the State of Connecticut. The expense of these Bonds shall be borne by the Purchaser. If at any time a surety or any such bond is declared as bankrupt or loses its right to do business in Connecticut, Purchaser shall, within ten (10) days after notice from the Town to do so, substitute an acceptance Bond (or Bond) in such form and sum as may be satisfactory to the Town. The premiums on such Bond shall be paid by the Purchaser.

8. Indemnification: The Purchaser will indemnify and hold harmless the Town and their officers, agents and employees from and against all Claims, Damage, Loss or Expense, including Attorney's fees arising out of or resulting from the performance of the Work, provided that any such Claims, Damages, Loss or Expense is attributed to Bodily Injury, Sickness, Disease, or Death, or to injury to or destruction of tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the Purchaser and SubPurchaser, anyone directly or indirectly employed by any of them or anyone for whose acts any of them, or anyone for whose acts any of them may be liable, the Indemnification Obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Purchaser or any SubPurchaser under Workman's Compensation Acts, Disability acts, Disability Benefit Acts or other Employee Benefit Acts.

9. Filing of Insurance Certificates: The Purchaser shall file the requisite 10% deposit and Certificate of Insurance as specified in the Request for proposal package, and execute said Agreement in triplicate within ten (10) calendar days from the date when the Agreement is delivered to the Purchaser, and in case of failure to do so, the person or firm will be considered to have abandoned the Agreement.

10. Execution: The Town, within ten (10) days of receipt of the acceptance Insurance Certificates, and Agreement signed by the party to whom the Agreement was awarded, shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the Town not execute the Agreement within such period, the Purchaser may, with WRITTEN NOTICE, withdraw his signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the Town.

11. Fictitious Business Name: The Purchaser further agrees that if it intends to use a fictitious trade name, that an acceptable certificate will be filed with the Woodstock Town Clerk as required by law showing the proper officer or person authorized to sign said contract.

12. Time is of the Essence: It is understood that time is of the essence in this contract and the Purchaser agrees to commence within the time specified in the agreement.

SECTION II

TOWN'S RESPONSIBILITIES

The Town has no obligation to provide any personnel or equipment of any kind for use by the Purchaser in the performance of the Work or any of the Purchaser's duties and responsibilities under this Agreement.

SECTION III

PAYMENT

A. PURCHASER PAYMENT

The Purchaser shall pay the amount of \$135,800 to the Town as set forth in its proposal dated October 24, 2014 entitled "Bid for Stumpage – October 24, 2014 – Town of Woodstock – Perrin Road" and made a part hereof, in the following installments:

1. Ten percent (10%) of the accepted bid amount upon execution of the Agreement: \$13,580
2. Forty percent (40%) of the accepted bid amount upon commencement of the Work: \$54,320
3. Fifty percent (50%) upon completion of 50% of the Work: \$67,900

B. EXPENSES

There shall be no expenses allowed under this Agreement.

C. OTHER PAYMENT PROVISIONS

1. The Purchaser is not permitted to incur any expenses which are to be charged against the Town without written consent of the Town.
2. The Purchaser is an independent Purchaser and shall be responsible for all wages and compensation paid to other individuals or entities in connection with the completion of the tasks covered by this Agreement.
3. The Purchaser is an independent Purchaser and shall furnish all supplies necessary for completion of the Work at its own expense.

SECTION IV

TERMINATION, SUSPENSION OR ABANDONMENT

This Agreement may be terminated by the Town upon at least thirty (30) days written notice to the Purchaser for the Town's convenience and without cause or in the event that the Project is permanently abandoned or any adverse decision by any agency of the State of Connecticut concerning the use or licensure of the site as a bulky waste transfer facility, specifically including any determination by the Connecticut Attorney General that this Agreement is in violation of or inconsistent with the terms of the Amos Eno Deed.

SECTION V

DISPUTE RESOLUTION

A. MEDIATION

If a dispute arises out of or relates to this Agreement, or breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by non-binding mediation under the Mediation Rules of the American Arbitration Association, before having recourse to a judicial forum.

B. ARBITRATION

The parties shall not be required to submit to arbitration. However, if the parties mutually agree to arbitrate, then the arbitration shall be held in accordance with the Arbitration Rules of the American Arbitration Association.

SECTION VI

MISCELLANEOUS PROVISIONS

A. GOVERNING LAW

If any clause or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision, which shall remain in full force and effect. The laws of the State of Connecticut shall govern the Agreement. Each of the parties shall submit and hereby consents to such courts exercise of jurisdiction. The place of performance and transaction of business shall be deemed to be the State of Connecticut, and in the event of litigation, the exclusive venue and place of jurisdiction shall be the State of Connecticut, and, more specifically, Windham County. In any successful action by the Town to enforce this Agreement, the Town shall be entitled to recover its attorney's fees and expenses incurred in such action.

B. ASSIGNABILITY

Neither the Town nor the Purchaser shall assign this Agreement without the written consent of the other. The Purchaser is not prohibited from assigning the proceeds due hereunder to a bank or other financial institution.

C. ENTIRE AGREEMENT

This Agreement, including **Exhibit A** referenced above and together with the Purchaser's October 24, 2014 Bid Form attached hereto as **Exhibit C** represents the entire and integrated agreement between the Town and Purchaser and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Town and the Purchaser. This Agreement supersedes all prior agreements and understandings between the parties and may not be modified or terminated orally. No supplement, modification, waiver, termination, or request for additional payment under this Agreement, or any provision hereof, shall be binding unless executed in writing and signed by both parties. No waiver of any provisions of this Agreement shall constitute a waiver of any other provision, nor shall such waiver constitute a continuing waiver unless so expressly provided.

D. THIRD-PARTY BENEFICIARIES

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Town or the Purchaser.

E. MULTIPLE COPIES OF THIS AGREEMENT

This Agreement may be executed in various counterparts, and each such counterpart shall constitute an original.

F. SUCCESSORS AND ASSIGNS

The Town and Purchaser, respectively, bind themselves, their partners, successors, and assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.

G. NUMBER AND GENDER

In the above Agreement the use of any particular gender or the plural or singular number is intended to include the other gender or number as the text of this Agreement may require.

H. PLACE OF EMPLOYMENT

The Purchaser may perform the tasks set forth in this agreement in such place and at such times as may be convenient and appropriate, so long as the tasks are completed in a timely manner within the time limits set forth in this Agreement. It is understood that the time within which the work is to be performed is of primary importance and of the essence of this Agreement. The Purchaser will proceed in a timely manner upon entry to this Agreement.

I. CONFLICT OF INTEREST

No employee, officer or agent of the Town shall participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested; nor shall any employee, officer or agent of the Town have any interest direct or indirect in this contract or the proceeds thereof.

J. NONDISCRIMINATION AND AFFIRMATIVE ACTION

The Purchaser agrees to comply with the nondiscrimination provisions of the laws of the State of Connecticut and the Town to take affirmative action to assure that applicants are employed and that employees are treated during employment in a manner in which provides equal employment opportunity and tends to eliminate any inequality based upon race, religion, national origin or sex.

K. COMPLIANCE WITH FEDERAL AND STATE LAW

The Purchaser's attention is directed to the fact that all applicable Federal and State law, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over operations of the Work shall apply, and each is incorporated herein by reference and each will be deemed to be included in the Agreement.

L. STATE AND FEDERAL TAXES

The Purchaser shall be responsible for any applicable Connecticut State or Federal Taxes, as may apply to the Work.

M. SUBCONTRACTORS

The Purchaser shall submit the names of all subcontractors, if any, that will be utilized in operating the facility. All subcontractors shall be subject to the review and approval of the Town of Woodstock.

The Town has executed this Agreement this ____ day of November, 2014, and Purchaser has set its hand and seal this ____ day of November, 2014.

PURCHASER:
Gutchess Lumber Co., Inc.

TOWN:
Town of Woodstock

By:
Its:
Duly Authorized

By: Allan D. Walker, Jr.
Its First Selectman, Duly Authorized

**TOWN OF WOODSTOCK
RETURN OF NOTICE**

I HEREBY CERTIFY THAT on November 6, 2014 I left a duplicate of the attached warning and notice of the Special Town Meeting of the Town of Woodstock, Connecticut, with Judy E. Walberg, its' Town Clerk.

I FURTHER CERTIFY THAT I caused a copy of said warning and notice to be published in the Woodstock Villager, a newspaper having substantial circulation in said Town, on November 14, 2014

I FURTHER CERTIFY THAT on November 6, 2014, I caused to be set upon the Legal Notice Board, and at all other places and signposts designated by the town, a written copy of said warning and notice signed by the Selectmen.

I FURTHER CERTIFY THAT all of the above acts were done at least five days before the holding of said meeting on November 19, 2014

/s/Allan D. Walker, Jr., First Selectman

I HEREBY CERTIFY THAT the foregoing Notice and Return of Notice are duly recorded in the records of the Town of Woodstock, Connecticut.

/s/Judy E. Walberg, Town Clerk

**TOWN OF WOODSTOCK
MINUTES OF SPECIAL TOWN MEETING
November 19, 2014
7:00PM**

A Special Town Meeting of the electors and citizens qualified to vote in town meetings of the Town of Woodstock, Connecticut, was held on Wednesday, November 19, 2014 at 7:00 p.m. at the Woodstock Town Hall, 415 Route 169, Woodstock, Connecticut to consider the following actions and to vote on the following matters:

Judy Walberg, Town Clerk read the call for the meeting and then asked for nominations from the floor for Moderator.

- 1.) To elect a Moderator; on motion of D. Mitchell Eaffy, second by Jeffrey Gordon, Barbara Rich was elected as tonight's Moderator.
- 2.) Moderator Barbara Rich asked for a motion. D. Mitchell Eaffy then made a motion with a second by David Fortin for the following:

To consider and vote upon the following Resolution:

RESOLVED, that the Town of Woodstock approve the Contract between the Town of Woodstock and Gutches Lumber, Inc. of Cortland, New York to allow the harvesting of timber on the 113 acre parcel of Town-owned land located on Perrin Road, Map 6389, Block 70, Lot 22, according to the Contract as recommended by the Board of Selectmen. A copy of the proposed Contract is available in the Town Clerk's office.

Moderator Barbara Rich then asked First Selectman Allan D. Walker Jr. to give a history of this project.

First Selectman Walker in May of this year the Board of Selectmen investigated the possibility of a timber harvest on this property. Selectman Paquette contacted Tom Trowbridge, a Forrester and walked the property with him to see if he thought it was a worthwhile venture. Mr. Trowbridge handled putting the bid packet together and getting it out to 16 or so bidders in September. Six bids came back and they were opened late October. The Selectmen chose Gutches Lumber as the high bidder at around \$135,000 and set this town meeting. The Selectmen then asked Mr. Trowbridge to develop a Forest Management Plan for the parcel that was done in early November.

Moderator Barbara Rich then opened the floor for discussion.

Most of the discussion centered around the Selectmen should have requested input from the Conservation Commission on the project and that to not utilize the WCC when that is their charge is a trust issue. James Kaeding, Bet Zimmerman, Mr. Wilmot and Jean Pillo of the

Conservation Commission voiced their opposition to this project. They felt the FMP that Mr. Trowbridge developed was not appropriate and they wanted the Selectmen to know that they are very interested and eager to help the Selectmen in this type of project. As that is part of their charge as the Conservation Commission. To help protect the land for the future and to help manage it responsibly.

The Moderator asked those present for a consensus to allow the Forrester, Mr. Trowbridge to speak. It was agreed.

Mr. Trowbridge explained the site walk, tree tagging and about the site in general. He also answered several questions from the audience. He was not aware the town wanted an FMP when he tagged the trees back in May.

One of the losing bidders, Mike Bartlett said he was abstaining and agreed with Mr. Trowbridge on what had been tagged. But he would have liked to see more of the poor quality trees taken out as well.

Selectman Eaffy stated he felt the Board did take their advice in having an FMP developed for the site later on. First Selectman Walker said the Board could have taken a different route, but they looked at the viability of the harvest and the opinions of Mr. Trowbridge and saw an opportunity for the town to do the harvest and generate revenue for the town.

Mr. Trowbridge answered more questions from the audience.

Alan Plofsky moved the question. Moderator Barbara Rich said this is not debatable and called for a hand vote. No votes 43, yes votes 31.

- 3.) To transact such other business as may properly come before said meeting. Moderator Barbara Rich asked for any other proper business and being none,
- 4.) Motion by Paul Wilbur, second by Steve Adams to adjourn. Meeting adjourned at 7:45pm.

Attest: Judy E. Walberg, Town Clerk